



*cen*

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/605,039	06/27/2000	Herbert Baechler	32771US1	8774

116 7590 12/17/2003

PEARNE & GORDON LLP  
1801 EAST 9TH STREET  
SUITE 1200  
CLEVELAND, OH 44114-3108

EXAMINER

NI, SUHAN

ART UNIT	PAPER NUMBER
----------	--------------

2643

DATE MAILED: 12/17/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/605,039

Applicant(s)

BAECHLER, HERBERT

Examiner

Suhan Ni

Art Unit

2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 6-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This communication is responsive to the amendment filed 09/05/2003.
2. Newly submitted claim 18 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claim 18, drawn to the manufacturing of a hearing aid, classified in class 29, subclass 896.21.

Newly added claim and the original claims are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP ' 806.05(f)). In the instant case the process can be performed by a different means.

3. Because these inventions are distinct for the reasons giving above and have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for the newly added claim 18 is not required for the others. Restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 18 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claims 20-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 20, it recites the limitation “the output of signals” in line 4. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 20, it recites the limitation “the acceptance of individual audio-stimulant reaction signals” in lines 6-7. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 20, the limitation of “a computing unit” in line 8 is indefinite, since the computing unit (3) is a part of an adaptation computing unit (1) as previously claimed (please see Fig. 2).

Regarding claim 21, the limitation of “the interface unit” in line 1 is indefinite, since at least two interface units have been claimed so far.

Regarding claim 22, the limitation of “the interface unit” in line 4 is indefinite, since at least two interface units have been claimed so far.

Regarding claim 23, the limitation of “the interface unit” in line 1 is indefinite, since at least two interface units have been claimed so far.

Regarding claim 24, it recites the limitation “the communication connection” in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 6, 8-9, 11-12, 14-15, 17 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Delage (US-6,058,197).

Regarding claims 6, 11-12 and 17, Delage discloses a fitting system for fitting a hearing aid (Fig. 2), comprising: a fitting calculator unit (20), receiving an input (from 24) and generating a setting signal output (to 24) for a hearing aid (36); and a rating unit (30) for generating an output in response to an auditory stimulus applied to a user of the hearing aid; wherein said output of said rating unit is linked to said input of said fitting calculator unit (24) and the setting signal output of the calculator unit is linked to a setting input of a hearing aid via a bi-directional interface unit (24) remote from said fitting calculator unit as claimed.

Regarding claims 8 and 14, Delage further discloses the fitting system for fitting a hearing aid, wherein the rating unit (30) has at least keypad and a voice input device as claimed.

Regarding claims 9, 15 and 19, Delage further discloses the fitting system for fitting a hearing aid, wherein the interface unit is a standalone unit (24) as claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2643

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7, 10, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Delage (US-6,058,197) over Vegter (US-6,286,073).

Regarding claims 7 and 13, Delage does not clearly show that said interface unit is an I<sup>2</sup>C interface as claimed. Vegter discloses an I<sup>2</sup>C interface (10), which is suitable for communicating data between a personal computer and an external device (col. 1, lines 57-67). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to provide the I<sup>2</sup>C interface or bus taught by Vegter for the hearing aid fitting system as an alternate choice, in order to provide a more efficient and effective way for data transfer and communication (col. 2, lines 16-24).

Regarding claims 10 and 16, Delage does not clearly show that at least a part of the interface unit is a wireless link as claimed. Since providing a short range wireless communication (one/two way) for testing/fitting a hearing device is well known in the art, it therefore would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to provide a wireless link for any part of the hearing aid fitting system as an alternate choice, in order to provide more convenient way for data transfer and communication (col. 2, lines 16-24) in fitting/testing a hearing aid.

### ***Response to Amendment***

8. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 2643

***Conclusion***

9. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

10. Any response to this final action should be mailed to:

**Commissioner of Patents and Trademarks  
Washington, D.C. 20231**

or faxed to:

**(703) 308-9051**, (for formal communications; please mark "EXPEDITED PROCEDURE"), or

**(703) 305-9508**, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to:

**Receptionist, Sixth Floor,  
Crystal Park II,  
2121 Crystal Drive,  
Arlington, Virginia 22202**

11. Any response to this final action should be mailed to:

**Commissioner of Patents and Trademarks  
Washington, D.C. 20231**

Art Unit: 2643

Or faxed to:

(703) 308-9051, (for formal communications; please mark "EXPEDITED  
PROCEDURE"), or

(703) 305-9508, (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to:

**Receptionist, Sixth Floor,  
Crystal Park II,  
2121 Crystal Drive,  
Arlington, Virginia 22202**

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is (703)-308-9322, and the number for fax machine is (703)-305-9508. The examiner can normally be reached on Monday through Thursday from 9:00 am to 7:30 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at (703) 305-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305-3900.

Suhan Ni  
Patent Examiner  
Art Unit 2643  
USPTO

  
**SUHAN NI  
PATENT EXAMINER**

December 9, 2003